

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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INDUSTRIAL INFO  
RESOURCES, INC.,

Plaintiff,

v.

MICHAEL JOHN VANDER MOLEN  
and ODDITY SOFTWARE, LLC,

Defendants.

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Case No. 1:07-CV-526

Hon. Richard Alan Enslen

**ORDER**

This matter is before the Court on Defendant Michael John Vander Molen's Motion for Summary Judgment. Plaintiff Industrial Info Resources, Inc. has failed to timely answer or respond. Oral argument is unnecessary in light of the case posture. *See* W.D. Mich. L.Civ.R. 7.2(d).

This is a peculiar case in many respects. It involves legally complex federal copyright claims, as well as state law diversity claims. Notwithstanding, the Motion for Summary Judgment makes this appear to be a very inconsequential suit. Defendant Michael John Vander Molen represents that the only revenue he received in connection with the alleged copyright violations was \$300, and the website giving rise to the violations is no longer operative. (Mem. of Law 3.) Further, it is apparent from the Court's docket that the reason for a lack of response is the pendency of a voluntary facilitative mediation on March 25, 2008. The Court in its discretion would prefer the mediation of this dispute as opposed to its potential resolution on an incomplete record. *See Federal Exp. Corp. v. U.S. Postal Service*, 75 F. Supp. 2d 807, 815 (W.D. Tenn. 1999) (denying summary judgment in light of incomplete record and citing: 10A Wright, Miller, & Kane, *Federal Practice & Procedure*,

Civil 3d § 2728 (West 1990) and *Askew v. Hargrave*, 401 U.S. 476, 479-80 (1971).) Likewise, federal courts have properly denied summary judgment without prejudice, in some instances, to allow mediation to proceed. *See, e.g., Performance Autoplex II Ltd. v. Mid-Continent Cas. Co.*, 322 F.3d 847, 852 n.6 (5th Cir. 2003) (noting district court's denial due to pending mediation). The same result is apt here given the incomplete record, the pendency of mediation, and the Court's desire to avoid decision of important legal questions framed within an inconsequential suit.

**THEREFORE, IT IS HEREBY ORDERED** that Defendant Michael John Vander Molen's Motion for Summary Judgment (Dkt. No. 31) is **DENIED WITHOUT PREJUDICE**.

DATED in Kalamazoo, MI:  
February 12, 2008

/s/ Richard Alan Enslen  
RICHARD ALAN ENSLEN  
SENIOR UNITED STATES DISTRICT JUDGE